

(3) The redemption of the property after foreclosure.

(4) Notice given by the mortgagee after the foreclosure and during the redemption period that it will not tender the property to the Commissioner.

(b) *Notice of termination.* No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section.

(c) *Effective termination date.* The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of insurance the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

[36 FR 24537, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 207.255 Defaults.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage; or

(2) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(b) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(d) For the purposes of this section the date of default shall be considered as:

(1) The date of the first uncorrected failure to perform a covenant or obligation; or

(2) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 days grace period, the mortgagee must, within 30 days thereafter, notify the Commissioner of such default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) Notwithstanding § 207.255(a)(2), the mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the failure of the mortgagor to comply with such covenant, regardless of the fact the mortgagee may not have elected to accelerate the debt.

[64 FR 4769, Jan. 29, 1999]

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

[64 FR 4770, Jan. 29, 1999]

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement which extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, it will hold in trust for disposition as directed by the Commissioner all rents or other

funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being appraised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it must, within 45 days thereafter, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the

Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner. The following requirements shall also be met by the mortgagee:

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

(2) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(3) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or priority of the lien created by the chattel security instruments; and